



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 30, 1994

Mr. Hugh W. Davis, Jr.  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton  
Fort Worth, Texas 76102

OR94-789

Dear Mr. Davis:

The City of Fort Worth (the "city") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 27550.

The city received a request for four Zoning Board of Adjustment ("zoning board") files concerning Southwest Paper Stock, Inc. ("Southwest"). The zoning board files requested were for file numbers BA-93-180, BA-93-142, BA-92-111, and BA-83-073. The city contends that the files are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

The city met its burden of showing that litigation is pending by submitting to this office court documents showing that Southwest has brought suit against the city for denial of special exceptions to the city zoning ordinances. The city also submitted to this office for review representative samples of documents from the files requested.<sup>1</sup>

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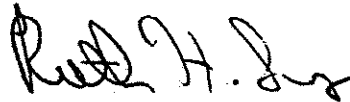
<sup>1</sup>The city's letter indicates that representative samples were sent, although it appears that the entire file for number 83-073 was submitted for review. We note that in reaching our decision here, we have assumed that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records does

The samples relate to zoning board applications for exceptions, variations, or modifications from Southwest. The information submitted to this office indicates that the requested files are related to the subject of the pending litigation. The city has met its burden of showing the applicability of section 552.103(a) to the file information.

However, the representative samples of information submitted to this office for file numbers BA-93-142, BA-93-180, and BA-92-111 are application forms that were filled out by Southwest. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. The BA-83-073 file that was submitted to this office also contains an application form filled out by Southwest and a notice letter to Southwest. Since Southwest, the opposing party in the anticipated litigation, has already seen these documents they may not be withheld pursuant to section 552.103(a). Any other information in the files that has already been seen by Southwest also must be released.

Pursuant to section 552.103(a), the city may withhold from disclosure other file documents to the extent that those documents have not previously been seen by Southwest. We note that the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is also within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/KHG/rho

Ref.: ID# 27550

(Footnote continued)

not reach or authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Enclosures: Submitted documents

cc: Mr. Joel P. Smyer, Esq.  
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(w/o enclosures)